IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 492 of 1983

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEVJIBHAI KHIMABHAI

Versus

VASHRAMBHAI ALLUBHAI SINCE DECD.THRO'HIS HEIRS

Appearance:

1. Civil Revision Application No. 492 of 1983

MR NV SOLANKI for Petitioner No. 1

MR PV NANAVATI for Respondent No. 1-1/3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 03/10/2002

ORAL JUDGEMENT

This Revision Application preferred under Section 29(2) of the Bombay Rent, Hotel and Lodging House Rates

Control Act, 1947 (hereinafter referred to as 'the Rent Act') arises from the judgment and order dated 4th January, 1983 passed by the learned Appellate Bench of the Small Causes Court, Ahmedabad in Civil Appeal No.314/1979. The petitioner before this Court is the appellant - defendant.

The suit premises is a room bearing Municipal Census No.288/A/33 situated at 'Dudhwali Chawl', Ahmedabad. The suit premiss was leased to the defendant for a monthly rent of Rs.10=00. The defendant was in arrears of rent since 1st July, 1974. On 19th December, 1975, the plaintiff gave notice (Ex.17) terminating the tenancy and demanding the arrears of rent as envisaged under sub section (2) of Section 12 of the Rent Act. The said notice was replied to by the defendant on 6th January, 1976. The said reply also was replied to by the plaintiff on 27th January, 1976 (Ex.19). However, the defendant did not handover the vacant possession of the suit premises nor did he pay the arrears of rent. The plaintiff instituted H.R.P. Suit No.110/1976 in the Court of Small Causes, Ahmedabad, inter alia, for recovery of the possession of the suit premises and the arrears of rent. The recovery of possession of the suit premises was sought on the grounds of arrears of rent and the reasonable and bonafide requirement of the suit premises by the plaintiff.

The suit was contested by the defendant by filing written statement (Ex.11). The defendant averred that he was always ready and willing to pay the rent. The rent of Rs.10=00 per month, however, was excessive. The standard rent of the suit premises was Rs.4=00 per month; that the defendant had tendered the rent from time to time by money orders (as detailed in the written statement), however, the said money orders were not accepted by the plaintiff; that the suit notice was replied to by the defendant on 6th January, 1976; that on 14th February, 1976 the defendant had made Application No.439/1976 for fixation of standard rent; that pursuant to the order of payment of interim standard rent the defendant had deposited the amount as directed by the Court. The defendant also agreed to pay future rent regularly. The defendant denied that the plaintiff was in occupation of only one room; that the plaintiff did not have sufficient accommodation for his entire family; that any other accommodation was available. It was urged that the defendant should suffer a greater hardship in the event the decree for eviction were passed.

Since the filing of the written statement the

defendant did not participate in the proceedings to the extent that he did not cross-examine the plaintiff who gave his oral evidence (Ex.16). Instead, the defendant, on 1st August, 1979, filed purshis Ex.23. Under the said purshis the defendant agreed that a sum of Rs.530=00 was outstanding towards the rent, which was tendered in the Court, and that the plaintiff required the suit premises for his personal use. It was stated that the defendant would require some time to find alternative accommodation and that the defendant would handover the vacant possession of the suit premises if he were granted 27 months for doing so. He also agreed to pay the outstanding amount of Rs.80=00 by 31st July, 1979. Under the said purshis, the defendant thus forgo his defence.

Pursuant to the said purshis, the learned trial Judge delivered the judgment on 2nd August, 1979. In absence of any defence put-forth by the defendant, the learned trial Judge held that the plaintiff required the suit premises for his personal use and that the defendant was in arrears of rent. A decree for eviction and the outstanding amount of rent was passed. The defendant was directed to handover the vacant possession of the suit premises on or before 1st December, 1981.

Feeling aggrieved, the defendant preferred Civil Appeal No.314/1979 before the Appellate Bench of the Small Causes Court, Ahmedabad. The said appeal was dismissed under the impugned judgment and order dated 4th January, 1983. Feeling aggrieved, the defendant has preferred the present Revision Application.

Mr.Solanki has assailed the decree for possession passed by the Courts below on two grounds. Mr.Solanki has submitted that no Rent Court has jurisdiction to pass decree for possession unless the Court were satisfied that any of the statutory grounds for passing the decree for possession was present. He has submitted that before passing decree for possession on the ground of personal requirement of the suit premises by the landlord, the Rent Court is enjoined to examine the question of comparative hardship also. He has relied upon Section 13(2) of the Rent Act and has submitted that the said sub-section forbears the Rent Court from passing a decree for eviction on the ground of reasonable and bonafide requirement by the landlord unless the Court is satisfied that having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant greater hardship would be caused by not passing a decree then by refusing to pass it. He has submitted that in

the instant case, the trial Court has abdicated the statutory duty imposed upon it i.e. though the trial Court proceeded to decide the suit on all issues, on the basis of the available evidence, the trial Court did not decide the issue as to the comparative hardship which may be caused to the landlord in case the decree for eviction were refused, and to the tenant, in case the decree for eviction were passed. He has submitted that such decree for eviction passed on the ground of personal requirement by the landlord without examining the comparative hardship is a nullity and requires to be quashed and set aside. In support of this contention, Mr.Solanki has relied upon the judgment of this Court in the matter of MANEKLAL NARANDAS V/S. GAJARABEN WIDOW OF CHUNILAL MANEKLAL [1975 G.L.R. 11] and of the Hon'ble Supreme Court in the matter of KISHANLAL LAXMINARAYAN KARAVA V/S. SMT.SHALINIBAI [A.I.R. 1991 S.C. 335]. Mr.Solanki has also relied upon the judgment of the Hon'ble Supreme Court in the matter of FEROZI LAL JAIN V/S. MAN MAL AND ANR. [S.C. & F.B. Rent Law Judgments 555].

The learned advocate Mr.P.V.Nanavati has answered the contention raised by Mr.Solanki. Mr.Nanavati has submitted that it is apparent that the trial Court was alive to the question of comparative hardship. Though the trial Court has said that the issue as regards the comparative hardship was not required to be decided, in fact, the trial Court has discussed the evidence and has come to the conclusion that the plaintiff would suffer a greater hardship in the event the decree for possession were refused. Mr.Nanavati has also submitted that even otherwise the trial Court was justified in relying upon the admission made by the defendant under purshis (Ex.23) and in drawing inference against the defendant as regards the comparative hardship. In support of this argument, Mr.Nanavati has relied upon the judgments of the Hon'ble Supreme Court in the matters of NAGINDAS RAMDAS V/S. DALPATRAM ICCHARAM ALIAS BRIJRAM AND ORS. [A.I.R. 1974 S.C. 471] and of ROSHAN LAL AND ANR. V/S. MADAN LAL AND ORS. [A.I.R. 1975 S.C. 2130].

In the matter of Maneklal Narandas (supra), Mr.Solanki has particularly relied upon paragraph 4 of the judgment. As regards the comparative hardship, the Court has held that "..The whole process of weighing the hardship is a delicate process where various factors would have to be thrown into the scales and the Court has to examine how each factor tilts the balance on either side and thereafter it has to find out the balance of hardship." The Court proceeded to hold that "..Therefore, merely because the tenant admits that the landlord's

requirement is reasonable and bonafide personal requirement for his own occupation, that does not entitle the Rent Court to pass eviction decree so far as the Bombay Rent Act is concerned. There would be an additional requirement to be satisfied on the ground of comparative hardship and it is only when this question is duly considered by the Court as required by Section 13(2) after giving proper opportunity to both the parties to lead necessary evidence thereon that an eviction decree can be passed against the tenant, if the resultant hardship was greater to the landlord and partial decree was not satisfactory solution so as to achieve a just balance." The eviction decree passed solely on the basis of the consent of the tenant was held to be a nullity as it violated the mandatory fetter laid down by Section 13(2) of the Rent Act and was to that extent held to be ultra vires the Rent Act.

Similarly, in the matter of Kishanlal Laxminarayan Karava (supra), the Hon'ble Supreme Court was of the view that there was no clear finding as on whom would work greater hardship and in absence of a clear finding in this regard remand would be necessitated for reconsideration of the matter.

Similar is the view expressed in the matter of Ferozi Lal Jain (supra). In the said matter, a decree for eviction was passed on the basis of the compromise arrived at between the parties. The Hon'ble Supreme Court held that "a decree for recovery of possession can be passed by any court only if that court is satisfied that one or more of the grounds mentioned in Section 13(1) are established. Without such a satisfaction, the court is incompetent to pass a decree for possession. In other words, the jurisdiction of the court to pass a decree for recovery of possession of any premises depends upon its satisfaction that one or more of the grounds mentioned in Section 13(1) have been proved."

In the matter of Nagindas Ramdas (supra) also, the Hon'ble Supreme Court has held that existence of one of the statutory grounds mentioned in Sections 12 and 13 is a sine qua non for passing a decree for eviction. However, in case of decree for possession on the basis of the consent terms, the Hon'ble Court held that the Court's satisfaction about existence of statutory ground for eviction can be presumed from the compromise incorporated in the decree. The Hon'ble Court held that "if at the time of the passing of the decree, there was some material before the Court, on the basis of which the Court could be prima facie satisfied, about the existence

of a statutory ground for eviction, it will be presumed that the Court was so satisfied and the decree for eviction apparently passed on the basis of a compromise, would be valid. Such material may take the shape either of evidence recorded or produced in the case or, it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement itself."

In the matter of Roshan Lal (supra) as regards the compromise in the suit for eviction, the Hon'ble Supreme Court held that "..If, however, parties choose to enter into a compromise due to any reason such as to avoid the risk of protracted litigating expenses, it is open to them to do so. The Court can pass a decree on the basis of the compromise. In such a situation the only thing to be seen is whether the compromise is in violation of the requirement of the law. In other words, parties can not be permitted to have a tenant's eviction merely by agreement without anything more. The compromise must indicate either on its face or in the background of other materials in the case that the tenant expressly or impliedly is agreeing to suffer a decree for eviction because the landlord, in the circumstances, is entitled to have such a decree under the law."

Considering the above judgments, it is apparent that the absolute proposition made by this Court in the matter of Maneklal Narandas (supra) has been watered down by the Hon'ble Supreme Court in the later judgments in the matters of Nagindas Ramdas (supra) and of Roshan Lal and Anr. (supra). In the judgment of Nagindas Ramdas (supra), the Hon'ble Court has invoked a presumption of satisfaction by the Court and in the matter of Roshan Lal (supra), the Hon'ble Supreme Court has gone a step further to hold that in the case where the compromise entered between the parties indicates existence of any of the statutory grounds on which a decree for eviction could have been passed, the Court would be justified in passing the decree for eviction on the basis of such compromise.

In the present case, as the facts reveal, the plaintiff urged a case for eviction on the ground of personal and bonafide requirement by stating that he had a larger family and did not have sufficient place to accommodate all. The said plea was established by the plaintiff by giving oral evidence, which was not controverted by the defendant either by cross-examining the plaintiff or by leading some evidence himself. Instead, in the compromise purshis (Ex.23), the defendant made a clear admission that the plaintiff required the

suit premises for personal use and agreed to vacate the suit premises if he were given 27 months for doing so. If, I have to follow the judgment of the Hon'ble Supreme Court in the matter of Roshanlal Lal (supra), it can be presumed that the defendant also admitted to the greater hardship that would be caused to the plaintiff in case a decree for eviction were refused, but I am unable to do so. The defendant had, in his written statement, clearly denied the claim of the plaintiff that he did not have sufficient accommodation for his family or that alternative accommodation was available to the defendant. I am, therefore, of the view that in absence of a clear admission by the defendant as to the hardship, the learned trial Judge ought to have undertaken the exercise as envisaged under Section 13(2) of the Rent Act and ought to have given a clear finding as regards the comparative hardship that may be caused to the plaintiff in case the decree for eviction were refused and, to the defendant, in case such decree were granted.

However, this is not sufficient to set aside the decree for eviction passed by the Courts below or for remand of the matter for recording of finding on this issue by the trial Court, because the decree for eviction has been passed on the ground of arrears of rent as well. It is, therefore, required to be examined whether the decree for eviction passed on the ground of arrears of rent is sustainable or not.

Mr.Solanki has strenuously urged that no decree for eviction on the ground of arrears of rent could have been passed against the defendant since, admittedly, the defendant had paid up all the arrears of rent pending the trial. On the date of the decree no amount of rent was due from the defendant. He has also submitted that there was bonafide dispute as to the standard rent of the suit premises and the defendant did make an application for fixation of the standard rent under Section 11(1) of the Rent Act. I am unable to agree with Mr.Solanki. Section 12(3)(a) of the Rent Act requires that if there is any dispute as to the standard rent of the suit premises, such dispute shall be raised within one month from the date of the receipt of the notice given under sub-section (2) of Section 12 of the Rent Act. In the present case, the defendant has filed written statement (Ex.11). In paragraph 3 of the written statement, he has stated that he had replied to the suit notice on 6th January, 1976 and had applied for fixation of standard rent by filing Standard Rent Application No.439/1976 on 14th February, 1976. Thus, admittedly, the dispute as to the standard rent was not raised by the defendant within one month of

the date of the receipt of the suit notice. Admittedly, the defendant did not pay the amount of arrears of rent within such one month. The defendant has, thus, forfeited the right to protection under Section 12 of the Rent Act. It is now well settled that payment of arrears of rent at the end of the trial is of no consequence. What is required is that such amount shall be paid/tendered within one month from the demand made by the landlord.

In the present case, all the conditions specified in Section 12(3)(a) of the Rent Act have been satisfied i.e. rent of the suit premises was payable by the month and the defendant was in arrears of rent for six months and more. In answer to the notice given under sub-section (2) of Section 12 of the Rent Act, the defendant neglected to make payment of the amount of arrears of rent, nor the dispute as to the standard rent of the suit premises was raised before expiration of a period of one month from the date of the receipt of the suit notice. Hence, in my view, the trial Court was right in passing the decree for eviction on the ground of arrears of rent.

Mr.Solanki has submitted that though the reply to the suit notice given by the defendant has not been brought on record, it can be culled from the reply (Ex.19) that the defendant had raised the dispute as to the standard rent in his reply dated 6th January, 1976 i.e. well within one month from the date of the receipt of the suit notice. I am unable to accept this argument. On the basis of the reply (Ex.19), it is not possible to hold that the defendant did raise the dispute as to the standard rent in his reply dated 6th January, 1976. Mr.Solanki has also submitted that the Appellate Court has erred in not framing the point for determination as to whether the defendant was a tenant in arrears, and in not giving decision on such point. There also it appears that the defendant did not challenge the decree before the Appellate Bench on a specific ground that the defendant was not a tenant in arrears. On perusal of the impugned judgment also, it is evident that this issue was not pressed before the Appellate Bench. Therefore, it can not be said that the Appellate Bench has erred in not framing this point for determination and in not giving its decision on such point.

In the result, the Revision Application fails. The Civil Revision Application is dismissed. Rule is discharged. The parties shall bear their own costs. Interim stay stands vacated. Registry is directed to

return the records to the Court below.

The learned advocate Mr.Solanki requests that the interim stay be continued for a period of eight weeks. The request is granted. The interim stay granted by this Court shall continue to operate till 1st December, 2002 on the same terms and conditions.

(Ms. R.M. Doshit, J.)

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